

**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

AMENDED SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO SUMMARY ORDERS FILED AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY THIS COURT'S LOCAL RULE 32.1 AND FEDERAL RULE OF APPELLATE PROCEDURE 32.1. IN A BRIEF OR OTHER PAPER IN WHICH A LITIGANT CITES A SUMMARY ORDER, IN EACH PARAGRAPH IN WHICH A CITATION APPEARS, AT LEAST ONE CITATION MUST EITHER BE TO THE FEDERAL APPENDIX OR BE ACCOMPANIED BY THE NOTATION: (SUMMARY ORDER). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF THAT SUMMARY ORDER TOGETHER WITH THE PAPER IN WHICH THE SUMMARY ORDER IS CITED ON ANY PARTY NOT REPRESENTED BY COUNSEL UNLESS THE SUMMARY ORDER IS AVAILABLE IN AN ELECTRONIC DATABASE WHICH IS PUBLICLY ACCESSIBLE WITHOUT PAYMENT OF FEE (SUCH AS THE DATABASE AVAILABLE AT [HTTP://WWW.CA2.USCOURTS.GOV/](http://www.ca2.uscourts.gov/)). IF NO COPY IS SERVED BY REASON OF THE AVAILABILITY OF THE ORDER ON SUCH A DATABASE, THE CITATION MUST INCLUDE REFERENCE TO THAT DATABASE AND THE DOCKET NUMBER OF THE CASE IN WHICH THE ORDER WAS ENTERED.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 30th day of October, two thousand nine,

PRESENT:

ROBERT A. KATZMANN,
BARRINGTON D. PARKER,*
Circuit Judges.

Rev. John Paul Hankins,
Plaintiff-Appellant,

-v.-

**No. 07-4556-cv
SUMMARY ORDER**

The New York Annual Conference of the United Methodist Church, The Stony Brook Community Church (United Methodist), and Bishop Ernest S. Lyght,
Defendants-Appellees.

* The Honorable Sonia Sotomayor, originally a member of this panel, was elevated to the Supreme Court on August 8, 2009. The two remaining members of the panel, who are in agreement, have decided this appeal. See 28 U.S.C. § 46(d); Local Rule 0.14(b); *United States v. Desimone*, 140 F.3d 457 (2d Cir. 1998).

1 FOR PLAINTIFF-APPELLANT: Timothy B. Glynn, Glynn Mercep and Purcell, LLP, Stony
2 Brook, N.Y.

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4 FOR DEFENDANTS-APPELLEES: Kevin T. Baine, Williams & Connolly LLP, Washington,
5 D.C. (Christopher R. Hart, Williams & Connolly LLP,
6 Washington, D.C., and Frederick K. Brewington,
7 Hempstead, N.Y., *on the brief*)

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9 FOR MOVANT: Steven W. Fitschen, The National Legal Foundation,
10 Virginia Beach, VA.

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12 UPON DUE CONSIDERATION, it is hereby ORDERED, ADJUDGED, AND
13 DECREED that the judgment of the district court is AFFIRMED.

14
15 John Paul Hankins appeals from a judgment of the United States District Court for the
16 Eastern District of New York (Hurley, *J.*). Hankins, a pastor at a United Methodist church, sued
17 the New York Annual Conference of the United Methodist Church (the “conference”) under the
18 Age Discrimination in Employment Act, 29 U.S.C. § 621 *et seq.* (2006) (the “ADEA”), and the
19 New York State Human Rights Law, N.Y. Executive Law § 290 *et seq.* (McKinney 2005)
20 (“NYSHRL”), alleging that defendants’ policy requiring ministers over the age of seventy to
21 retire violated those two statutes. The district court dismissed Hankins’ suit pursuant to Federal
22 Rules of Civil Procedure 12(b)(1) and (6); it concluded that under our earlier opinion in this case,
23 *Hankins v. Lyght*, 441 F.3d 96, 103 (2d. Cir. 2006) (*Hankins I*), the Religious Freedom
24 Restoration Act, 42 U.S.C. 2000bb *et seq.* (2006), (“RFRA”) was the governing law, and that
25 Hankins would not be able to show a compelling interest in applying the ADEA, as RFRA
26 requires. We assume familiarity with the underlying facts and procedural history of this case, as
27 well as the issues on appeal.

1 DISCUSSION

2 Hankins claims that the district court erred by dismissing on this basis. We review such
3 dismissals *de novo*. *Maloney v. Soc. Sec. Admin.*, 517 F.3d 70, 74 (2d Cir. 2008). The
4 Conference previously had argued that a ministerial exception to the ADEA existed which would
5 preclude its application to Hankins, and the district court agreed. However, in *Hankins I*, we
6 vacated that decision, held that RFRA is applicable to suits between private individuals (at least
7 with regards to laws that the federal government may enforce), and remanded so that the district
8 court could consider the applicability of RFRA..

9 On remand, the district court held that RFRA had displaced the ministerial exception,
10 although the suit should still be dismissed under RFRA. *Hankins v. N.Y. Annual Conf. of the*
11 *United Methodist Church*, 516 F. Supp. 2d 225, 234-35 (E.D.N.Y. 2007) (*Hankins II*).
12 Subsequently, in *Rweyemamu v. Cote*, 520 F.3d 198, 207 (2d Cir. 2008), we held that the First
13 Amendment compelled the dismissal of a Title VII claim brought by an ordained Catholic priest
14 because his termination was based on allegedly unsatisfactory performance of his religious
15 duties. We also cited with approval *Minker v. Balt. Annual Conf. of the United Methodist*
16 *Church*, 894 F.2d 1354, 1355-56 (D.C. Cir. 1990), which held that a constitutional exception to
17 the ADEA existed in the case of a Methodist minister denied a pastorage, allegedly due to his
18 age. The facts in this case parallel those in *Rweyemamu* and *Minker*: Hankins' duties were that
19 of an ordained United Methodist minister, and the basis for his mandatory retirement was a rule
20 contained in the central governing document of the United Methodist Church. RFRA, of course,
21 cannot displace a constitutionally-mandated rule. Accordingly, we hold that the constitutionally-
22 based ministerial exception requires the dismissal of Hankins' suit. *See McNally Wellman Co. v.*

1 *N. Y. State Elec. & Gas Corp.*, 63 F.3d 1188, 1194 (2d Cir. 1995) (“We . . . may affirm on any
2 ground supported by the record.”).

3 We have reviewed Hankins’ remaining claims and find them to be without merit.

4 CONCLUSION

5 For the foregoing reasons, the judgment of the district court is AFFIRMED.

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7 For the Court:
8 Catherine O’Hagan Wolfe, Clerk

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10 By: _____
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